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26161 7590 05/06/2009

FISH & RICHARDSON PC  
P.O. BOX 1022  
MINNEAPOLIS, MN 55440-1022

EXAMINER

CHANDLER, SARA M

ART UNIT

PAPER NUMBER

3693

DATE MAILED: 05/06/2009

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/040,912

01/07/2002

John F. Malitzis

09857-086001

3822

TITLE OF INVENTION: AUTOMATED MARKET SYSTEM WITH SELECTABLE MATCH-OFF OF ORDER FLOW

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1510	\$300	\$0	\$1810	08/06/2009

**THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.**

**THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.**

### HOW TO REPLY TO THIS NOTICE:

#### I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

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If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.**

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INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

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26161 7590 05/06/2009

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## **Certificate of Mailing or Transmission**

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/040,912 01/07/2002 John F. Malitzis 09857-086001 3822

TITLE OF INVENTION: AUTOMATED MARKET SYSTEM WITH SELECTABLE MATCH-OFF OF ORDER FLOW

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
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nonprovisional NO \$1510 \$300 \$0 \$1810 08/06/2009

EXAMINER	ART UNIT	CLASS-SUBCLASS
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CHANDLER, SARA M 3693 705-037000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 \_\_\_\_\_
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 \_\_\_\_\_
- 3 \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) : ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies \_\_\_\_\_

4b. Payment of Fee(s); (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

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This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,912	01/07/2002	John F. Malitzis	09857-086001	3822
26161	7590	05/06/2009	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			CHANDLER, SARA M	
			ART UNIT	PAPER NUMBER
			3693	
DATE MAILED: 05/06/2009				

## Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 1309 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 1309 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/040,912	MALITZIS, JOHN F.	
	<b>Examiner</b>	<b>Art Unit</b>	
	SARA CHANDLER	3693	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 03/06/09.
2. ☒ The allowed claim(s) is/are 1-14 and 17-19.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_.

**Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application                     |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date ____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date ____     | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance  |
|  | 9. <input type="checkbox"/> Other ____.   |

## **DETAILED ACTION**

### ***Response to Amendment***

This Office Action is responsive to Applicant's appeal brief for application 10/040,912 (01/07/02) filed on 03/06/09.

### ***Status of the Claims***

Claims 4, 5, 9 and 10 are original. Claims 1, 2, 6 - 8, 11- 14 are currently amended. Claims 3 and 17 - 19 were previously presented. Claims 15 and 16 are cancelled. Thus, claims 1- 14 and 17 - 19 are still pending.

### ***Allowable Subject Matter***

Claims 1- 14 and 17 - 19 are allowed, subject to an examiner's amendment described below.

## **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Denis Maloney, Reg. No. 29,670 on 4/21/09.

The application has been amended as follows: Please amend claims 1, 2, 6 - 8, 11- 14.

1. (Currently Amended) A computer implemented method of processing an order in an electronic-based trading system, the method comprises:

receiving an order to buy or sell a product, the order having a market participant identification and an indicator for whether an order is qualified to avoid internalization execution; for the order,

~~checking the order in a computer to determine~~ determining by a computer if a market participant has qualified the order for avoidance of an internalization execution for the order in the electronic-based trading system, where internalization execution corresponds to execution of an order if the market participant identification associated the order matches a market participant identification representing a quote in the system that is at the best bid or best offer price in the system regardless of the priority of that quote in the system; ~~[[.]]~~ and

~~satisfying~~ executing the order according to whether or not the market participant has qualified the order for avoidance of internalization execution.

2. (Currently Amended) The method of claim 1 wherein if ~~[[a]]~~ the market participant has not qualified the order for avoidance of an internalization execution, the method further comprises:

checking if a market participant identification associated with the order matches a market participant identification representing a quote in the electronic-based trading system which is at the best bid or best offer price in the electronic-based trading system; and if there is a match,

matching-off the order against the quote of the matching market participant without regard to a priority of other quotes in the electronic-based trading system, against the one of the best bid or best offer that is at the opposite side of a market for a product specified by the order.

6. (Currently Amended) The method of claim 1 wherein if ~~[[a]]~~ the market participant has qualified the order for avoidance of an internalization execution, the method further comprises:

matching the order to a order of a market participant that has the one of the best bid or best offer that is at the opposite side of a market for the product.

7. (Currently Amended) A networked computer system for providing an electronic-based market system comprises:

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one or more networked computers configured to receive orders and match orders against quotes posted in the system on a time priority basis with the orders having a market participant identification and an indicator to avoid internalization execution;

check if a market participant identification associated with a received order matches a market participant identification representing a quote in the system that is at the best bid or best offer price in the system; and

check if the market participant has qualified the order for avoidance of the internalization execution for the order in the market system where internalization execution corresponds to execution of an order where the market participant identification associated the order matches a market participant identification representing a quote in the system that is at the best bid or best offer price in the system regardless of the priority of that quote in the system; and

match the order with quotes in the system according to whether the order is qualified for avoidance of the internalization execution.

8. (Currently Amended) The system of claim 7 wherein, the one or more computers are further configured, if ~~[[a]]~~ the market participant has not qualified the order for avoidance of an internalization execution, ~~to the system~~:

~~checks~~ if a market participant identification associated with the order matches a market participant identification representing a quote in the system which is at the best bid or best offer price in the system; and if there is a match,

match~~[[es-off]]~~ the order against the quote of the matching market participant without regard to a priority of other quotes in the system, against the one of the best bid or best offer that is at the opposite side of a market for a product specified by the order.

11. (Currently Amended) The system of claim 7 wherein if ~~[[a]]~~ the market participant has qualified the order for avoidance of an internalization execution, the system matches the order to an order of a market participant that has the one of the best bid or best offer that is at the opposite side of the market.

12. (Currently Amended) A computer program product residing on a computer readable medium for operating an electronic based trading system comprises instructions for causing a computer to:

receive an order from a market participant's customer, the order having a market participant identification and an indicator to avoid internalization execution; and for the order,

check if the market participant has qualified the order for avoidance of an internalization execution in the electronic based trading system where internalization execution corresponds to execution of an order if the market participant identification associated the order matches a market participant identification representing a quote in the system that is at the best bid or best offer price in the system regardless of the priority of that quote in the system;

match the order according to whether or not the market participant has qualified the order for avoidance of internalization execution.

13. (Currently Amended) The computer program of claim 12 further comprises instructions to:

check if the market participant identification associated with the order matches a market participant identification representing a quote in the system which is at the best bid or best offer price in the system, if a market participant has not qualified the order for avoidance of an internalization execution; and if there is a match,

match-off the order against the quote of the matching market participant without regard to a priority of other quotes in the system, against the one of the best bid or best offer that is at the opposite side of a market for a product specified by the order.

14. (Currently Amended) The computer program product of claim 12 further comprises instructions to:

match the order to a order of a market participant that has the one of the best bid or best offer that is at the opposite side of the market if the market participant has qualified the order for avoidance of an internalization execution.

***Reasons for Allowance***

The following is an examiner's statement of reasons for allowance:

The closest prior art of record is "Market Fragmentation," by Hans R. Stoll. Financial Markets Research Center. Policy Paper No. 00-11. Vanderbilt University. April 28, 2000. Current Version: September 5, 2000. (hereinafter Stoll) Although, Stoll is similar to the instant application in some respects, there are clear patentable distinctions.

Stoll describes how brokers that internalize or preference order flow achieve best price by agreeing to send the order to a market maker that promises to match the best price when the order is presented. Stoll further describes how excessive preferencing or internalization can harm markets. Stoll suggests, that if all order flow were preferenced or internalized, no market maker would have an incentive to narrow the spread to attract orders because a better price would simply be matched by other market makers and would fail to attract additional orders.

The claimed invention teaches a method, system and computer program product residing on a computer readable medium pertaining to an electronic-based trading system. The claimed invention including receiving an order to buy or sell a product, determining if a market participant has qualified the order for avoidance of an internalization execution for the order in the electronic-based trading system, and executing or matching the order according to whether or not the market participant has qualified the order for avoidance of internalization execution.

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As stated in applicant's appeal brief (03/06/09), the claimed invention is distinct from the prior art because:

Stoll neither describes nor suggests "... checking [an] order in a computer to determine if a market participant has qualified the order for avoidance of an internalization execution for the order in the electronic-based trading system, where internalization execution corresponds to execution of an order if the market participant identification associated with the order matches a market participant identification representing a quote in the system that is at the best bid or best offer price in the system regardless of the priority of that quote in the system..."

Rather, Stoll states:

Brokers that internalize or preference order flow achieve best price by agreeing to send the order to a market maker that promises to match the best price when the order is presented. In other words, a market maker may never post the best price and yet receive designated order flow.

Excessive preferencing or internalization can harm markets. If all order flow were preferenced or internalized, no market maker would have an incentive to narrow the spread to attract orders because a better price would simply be matched by other market makers and would fail to attract additional orders.

While Stoll mentions the concept of internalization, and possible consequences for markets, Stoll neither describes nor suggests "... checking [an] order in a computer to determine if a market participant has qualified the order for avoidance of an internalization execution for the order in the electronic-based trading system, where internalization execution corresponds to execution of an order if the market participant identification associated with the order matches a market participant identification representing a quote in the system that is at the best bid or best offer price in the system regardless of the priority of that quote in the system ... ," as recited in claim 1.

In fact, Stoll describes a different solution to the problem of excessive internalization:

A middle ground between matching the best price and strict price-time priority is a requirement to route orders to the market posting the best price.

Therefore, Stoll in fact teaches away from the cited features of claim 1.

Claim 1 is allowed because the closest prior art of record, Stoll, alone or in combination, fails to teach, suggest or otherwise render obvious the limitations of a computer implemented method of processing an order in an electronic-based trading system, the method comprises:

*receiving an order to buy or sell a product, the order having a market participant identification and an indicator for whether an order is qualified to avoid internalization execution; for the order,*

*and*

*determining by a computer if a market participant has qualified the order for avoidance of an internalization execution for the order in the electronic-based trading system, where internalization execution corresponds to execution of an order if the market participant identification associated the order matches a market participant identification representing a quote in the system that is at the best bid or best offer price in the system regardless of the priority of that quote in the system;*

*and*

*executing the order according to whether or not the market participant has qualified the order for avoidance of internalization execution.*

Independent claims 7 and 12 are allowable based on a similar rationale. Dependent claims are allowed based on the same rationale as the claims from which they depend.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

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accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARA CHANDLER whose telephone number is (571)272-1186. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMC  
/JAGDISH N PATEL/  
Primary Examiner, Art Unit 3693